

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

James G. Blakely,	)	
	)	
Petitioner,	)	C/A. No.: 4:04-22904-MBS-TER
	)	
vs.	)	<b>OPINION AND ORDER</b>
	)	
Jon Ozmint and Henry McMaster, Attorney	)	
General for South Carolina,	)	
	)	
Respondents.	)	
	)	

---

Petitioner James Blakely is a state prisoner in the custody of the South Carolina Department of Corrections. Petitioner, proceeding pro se, brought this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on November 16, 2005. Respondents filed a motion for summary judgment on January 6, 2005. On May 25, 2005, the court granted Petitioner leave to amend his petition. Respondents withdrew their motion for summary judgment and re-filed it on July 8, 2005. By order filed July 12, 2005, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Petitioner was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Petitioner filed a response on August 16, 2005.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling. The Magistrate Judge filed a Report and Recommendation on February 2, 2006, in which he recommended that the within action be dismissed without prejudice to allow Petitioner to exhaust his state remedies. Petitioner filed a response to the Report and Recommendation on February 8, 2006, in which he concurred with the Magistrate Judge's recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1). In the absence of objections to the Report and Recommendation, the court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein.

Accordingly, the within action is **dismissed** without prejudice. Respondents' motion for summary judgment is **denied** as moot.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
United States District Judge

Columbia, South Carolina  
February 23, 2006

#### **NOTICE OF RIGHT TO APPEAL**

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.